

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 1008

Introduced by Senator Machado

February 21, 2003

An act to amend Section 999.9 of, *and to add Section 999.14 to*, the Military and Veterans Code, *and to amend Section 10115.10 of, and to add Section 10115.9 to, the Public Contract Code*, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1008, as amended, Machado. Veterans: contracts: disabled veteran business enterprises.

Under existing law, any state governmental entity that awards contracts for professional bond services and for construction and certain related purposes ~~have~~ *has* annual statewide participation goals of not less than 3% for disabled veteran business enterprises, as defined.

This bill would prohibit a limited liability company from being certified as a disabled business enterprise for these purposes.

Existing law imposes a civil penalty with respect to, *among other things*, fraudulently obtaining certification as a disabled veteran business enterprise.

~~This~~

This bill would provide, among other things, that it is unlawful to knowingly and with intent to defraud, fraudulently represent participation of a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract. It would also make it unlawful, and subject to a specified civil penalty, to establish, or cooperate in the establishment of, or exercise control over, a firm found to have violated the foregoing prohibitions. The bill would make it a

misdemeanor to violate all of the foregoing prohibitions, thereby imposing a state-mandated local program.

The bill would also permit a court to order the defendant to pay all or a portion of plaintiff's costs and attorneys' fees in a civil action brought for violations of these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 999.9 of the Military and Veterans Code
2 is amended to read:
3 999.9. (a) It shall be unlawful for a person to:
4 (1) Knowingly and with intent to defraud, fraudulently obtain,
5 retain, attempt to obtain or retain, or aid another in fraudulently
6 obtaining or retaining or attempting to obtain or retain,
7 certification as a disabled veteran business enterprise for the
8 purpose of this article.
9 (2) Willfully and knowingly make a false statement with the
10 intent to defraud, whether by affidavit, report, or other
11 representation, to a state official or employee for the purpose of
12 influencing the certification or denial of certification of any entity
13 as a disabled veteran business enterprise.
14 (3) Willfully and knowingly obstruct, impede, or attempt to
15 obstruct or impede, any state official or employee who is
16 investigating the qualifications of a business entity which has
17 requested certification as a disabled veteran business enterprise.
18 (4) Knowingly and with intent to defraud, fraudulently obtain,
19 attempt to obtain, or aid another person in fraudulently obtaining
20 or attempting to obtain, public moneys to which the person is not
21 entitled under this article.
22 (5) *Knowingly and with intent to defraud, fraudulently*
23 *represent participation of a disabled veteran business enterprise*
24 *in order to obtain or retain a bid preference or a state contract.*



(6) Establish, or cooperate in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to (5), inclusive. Any person or firm who violates this paragraph is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed fifty thousand dollars (\$50,000) for the first violation, and a civil penalty not to exceed two hundred thousand dollars (\$200,000) for each additional, or subsequent violation.

(b) Any person who violates any of the provisions of subdivision (a) shall be ~~liable for a civil penalty not to exceed five thousand dollars (\$5,000) for the first violation, and a civil penalty not to exceed twenty thousand dollars (\$20,000) for each~~ guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding one thousand dollars (\$1,000), or by both. In addition, and except as specified in paragraph (6) of subdivision (a), the person shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for the first violation, and a civil penalty not to exceed thirty thousand dollars (\$30,000) for each additional or subsequent violation. The court may order the defendant to pay all or a portion of plaintiff's costs and attorneys' fees in a civil action brought pursuant to this section.

~~(c) Any person who violates subdivision (a) shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as either a contractor, subcontractor, or supplier in, any state contract or project for a period of not less than 30 days nor more than one year. However, for an additional or subsequent violation the period of suspension shall be extended for a period of up to three years. Any business or person who fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c)~~

(c) (1) Any person who violates subdivision (a) shall, if certified as a disabled veteran business enterprise, have the business' certification revoked for a period of not less than one year, and shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as either a contractor, subcontractor, or supplier in, any state contract or project for a period of not less than one year. However, for an additional or subsequent violation the period of suspension shall be extended for a period of not less than three years. The certification revocation shall apply to the principals of the

1 *business and any subsequent businesses formed by those*
2 *principals.*

3 (2) *Any business or person who fails to satisfy the penalties*
4 *imposed pursuant to subdivision (b) and paragraph (1) shall be*
5 *prohibited from further contracting with the state until the*
6 *penalties are satisfied.*

7 (d) *The awarding department shall report all alleged violations*
8 *of this section to the Office of Small and Minority Business. The*
9 *office shall subsequently report all alleged violations to the*
10 *Attorney General who shall determine whether to bring a civil*
11 *action against any person or firm for violation of this section.*

12 (e) *The office shall monitor the status of all reported violations*
13 *and shall maintain and make available to all state departments a*
14 *central listing of all firms and persons who have been determined*
15 *to have committed violations resulting in suspension.*

16 (f) *No awarding department shall enter into any contract with*
17 *any person suspended for violating this section during the period*
18 *of the person's suspension. No awarding department shall award*
19 *a contract to any contractor utilizing the services of any person as*
20 *a subcontractor suspended for violating this section during the*
21 *period of the person's suspension.*

22 (g) *The awarding department shall check the central listing*
23 *provided by the office to verify that the person or contractor to*
24 *whom the contract is being awarded, or any person being utilized*
25 *as a subcontractor or supplier by that person or contractor, is not*
26 *under suspension for violating this section.*

27 SEC. 2. *Section 999.14 is added to the Military and Veterans*
28 *Code, to read:*

29 999.14. *A limited liability company may not be certified as a*
30 *disabled veteran business enterprise pursuant to this article.*

31 SEC. 3. *Section 10115.9 is added to the Public Contract Code,*
32 *to read:*

33 10115.9. *A limited liability company may not be certified as*
34 *a disabled veteran business enterprise pursuant to this article.*

35 SEC. 4. *Section 10115.10 of the Public Contract Code is*
36 *amended to read:*

37 10115.10. (a) *It shall be unlawful for a person or firm to:*

38 (1) *Knowingly and with intent to defraud, fraudulently obtain,*
39 *retain, attempt to obtain or retain, or aid another in fraudulently*
40 *obtaining or retaining or attempting to obtain or retain, acceptance*

1 or certification as a minority, women, or disabled veteran business
2 enterprise, for the purposes of this article.

3 (2) Willfully and knowingly make a false statement with the
4 intent to defraud, whether by affidavit, report, or other
5 representation, to a state official or employee for the purpose of
6 influencing the acceptance or certification or denial of acceptance
7 or certification of any entity as a minority, women, or disabled
8 veteran business enterprise.

9 (3) Willfully and knowingly obstruct, impede, or attempt to
10 obstruct or impede, any state official or employee who is
11 investigating the qualifications of a business entity which has
12 requested acceptance or certification as a minority, women, or
13 disabled veteran business enterprise.

14 (4) Knowingly and with intent to defraud, fraudulently obtain,
15 attempt to obtain, or aid another person or firm in fraudulently
16 obtaining or attempting to obtain, public moneys to which the
17 person is not entitled under this article.

18 (5) *Knowingly and with intent to defraud, fraudulently*
19 *represent participation of a disabled veteran business enterprise*
20 *in order to obtain or retain a bid preference or a state contract.*

21 (6) Establish, or cooperate in the establishment of, or exercise
22 control over, a firm found to have violated any of paragraphs (1)
23 to ~~(4)~~ (5), inclusive. Any person or firm who violates this
24 paragraph is guilty of a misdemeanor and shall be liable for a civil
25 penalty not to exceed fifty thousand dollars (\$50,000) for the first
26 violation, and a civil penalty not to exceed two hundred thousand
27 dollars (\$200,000) for each additional, or subsequent violation.

28 ~~(6)~~

29 (7) This section shall not apply to minority and women
30 business enterprise programs conducted by public utility
31 companies pursuant to the California Public Utilities
32 Commission's General Order 156.

33 ~~(b) Any person who violates paragraphs (1) to (4), inclusive, of~~
34 ~~subdivision (a) is guilty of a misdemeanor and shall be liable for~~
35 ~~a civil penalty not to exceed five thousand dollars (\$5,000) for the~~
36 ~~first violation, and a civil penalty not to exceed twenty thousand~~
37 ~~dollars (\$20,000) for each additional or subsequent violation.~~

38 ~~(c) Any person or firm that violates subdivision (a) shall, in~~
39 ~~addition to the penalties provided for in subdivision (b), be~~
40 ~~suspended from bidding on, or participating as either a contractor,~~

~~1 subcontractor, or supplier in, any state contract or project for a
2 period of not less than 30 days nor more than one year. However,
3 for an additional or subsequent violation the period of suspension
4 shall be extended for a period of up to three years. Any person or
5 firm that fails to satisfy the penalties imposed pursuant to
6 subdivisions (b) and (c) shall be prohibited from further
7 contracting with the state until the penalties are satisfied.~~

*(b) Any person who violates any of the provisions of subdivision
9 (a) shall be guilty of a misdemeanor punishable by imprisonment
10 in the county jail not exceeding six months or by a fine not
11 exceeding one thousand dollars (\$1,000), or by both. In addition,
12 and except as specified in paragraph (6) of subdivision (a), the
13 person shall be liable for a civil penalty not to exceed ten thousand
14 dollars (\$10,000) for the first violation, and a civil penalty not to
15 exceed thirty thousand dollars (\$30,000) for each additional or
16 subsequent violation. The court may order the defendant to pay all
17 or a portion of plaintiff's cost and attorney's fees in a civil action
18 brought pursuant to this section.*

*(c) (1) Any person who violates subdivision (a) shall, if
20 certified as a disabled veteran business enterprise, have the
21 business' certification revoked for a period of not less than one
22 year; and shall, in addition to the penalties provided for in
23 subdivision (b), be suspended from bidding on, or participating as
24 either a contractor, subcontractor, or supplier in, any state
25 contract or project for a period of not less than one year. However,
26 for an additional or subsequent violation the period of suspension
27 shall be extended for a period of not less than three years. The
28 certification revocation shall apply to the principals of the
29 business and any subsequent businesses formed by those
30 principals.*

*(2) Any business or person who fails to satisfy the penalties
32 imposed pursuant to subdivision (b) and paragraph (1) shall be
33 prohibited from further contracting with the state until the
34 penalties are satisfied.*

*(d) The awarding department shall report all alleged violations
36 of this section to the Office of Small and Minority Business. The
37 office shall subsequently report all alleged violations to the
38 Attorney General who shall determine whether to bring a civil
39 action against any person or firm for violation of this section.*

1 (e) The office shall monitor the status of all reported violations
2 and shall maintain and make available to all state departments a
3 central listing of all firms and persons who have been determined
4 to have committed violations resulting in suspension.

5 (f) No awarding department shall enter into any contract with
6 any person or firm suspended for violating this section during the
7 period of the person's or firm's suspension. No awarding
8 department shall award a contract to any contractor utilizing the
9 services of any person or firm as a subcontractor suspended for
10 violating this section during the period of the person's or firm's
11 suspension.

12 (g) The awarding department shall check the central listing
13 provided by the office to verify that the person, firm, or contractor
14 to whom the contract is being awarded, or any person or firm being
15 utilized as a subcontractor by that person, firm, or contractor, is not
16 under suspension for violating this section.

17 *SEC. 5. No reimbursement is required by this act pursuant to*
18 *Section 6 of Article XIII B of the California Constitution because*
19 *the only costs that may be incurred by a local agency or school*
20 *district will be incurred because this act creates a new crime or*
21 *infraction, eliminates a crime or infraction, or changes the penalty*
22 *for a crime or infraction, within the meaning of Section 17556 of*
23 *the Government Code, or changes the definition of a crime within*
24 *the meaning of Section 6 of Article XIII B of the California*
25 *Constitution.*